



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Howard J. Federoff *et al.* Art Unit : 1635  
Serial No. : 09/997,848 Examiner : M. Schmidt  
Filed : November 29, 2001  
Title : HELPER VIRUS-FREE HERPESVIRUS AMPLICON PARTICLES AND USES  
THEREOF

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Responsive to the action mailed June 10, 2003, applicants elect the invention of Group II (claims 53-55).

The previous Examiner also found that the present application contains claims directed to seven patentably distinct categories of species. Of those, three species elections apply to claims 53-55: the species designated "(1)" (types of accessory proteins), "(2)" (types of herpesviruses), and "(7)" (types of proteins) (see Office action at page 3)

Applicants make the following species elections that read on claims 53-55. For species "1", Applicants elect HSV-1 virion host shutoff protein. For species "2", Applicants elect herpes simplex virus. For species "7", Applicants elect immunomodulatory protein.

Furthermore, applicants wish to point out that the species election designated "(5)" (that is, types of cosmids) was a mistake on the part of the previous Examiner because the claim on which it reads (that is, non-elected claim 12) recites "one or more packaging vectors comprises a set of cosmids comprising cos6 $\Delta$ a, cos28, cos14, cos56, and cos48 $\Delta$ a". The plain language of claim 12 makes no suggestion that constituent members of the "set" are to be considered in isolation, which a species election implies. In a telephone interview on December 4, 2003, Examiner Lacourciere agreed with applicants that species election (5) had been made in error.

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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These elections are made without traverse.

Filed herewith is a petition for extension of time, and a check for the requisite fee. If there are any other charges, or any credits, please apply them to Deposit Account No. 06-1050.

Respectfully submitted,

Date: December 10, 2003

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